



46TH ANNUAL INDIANA CONSORTIUM

of

STATE AND LOCAL HUMAN RIGHTS AGENCIES CONFERENCE

PRESENTED *by:*





ICRC Legal Update

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DISCLAIMER

- The ICRC doesn't make the laws, we just enforce them.
- This is not legal advice. For legal advice, please contact an attorney.
- This information should not be taken as the Indiana Civil Rights Commission's policy.
- This presentation is intended to provide general information.

ICRC: PURPOSE

The Indiana Civil Rights Commission enforces the civil rights laws of the State of Indiana.

We investigate complaints of discrimination & educate organizations, companies, landlords, associations, & individuals on their rights & responsibilities under Indiana Civil Rights Laws.

ICRC: JURISDICTION

The Indiana Civil Rights Commission enforces the Indiana Civil Rights Code (IC 22-9) and the Indiana Fair Housing Act (IC 22-9.5).

ICRC's jurisdiction extends to individuals, private or public entities, housing providers, and business establishments within the State of Indiana.

ICRC: PROTECTED CLASSES

Not all discrimination is against the law, but in Indiana a person may not be treated differently because of their:

1. Race
2. Color
3. Gender
4. Veteran Status (in employment)
5. Familial Status (having children under 18, in housing)
6. National Origin
7. Ancestry
8. Religion
9. Disability
10. Age (investigated by Department of Labor or referred to EEOC)

ICRC: ENFORCEMENT AREAS

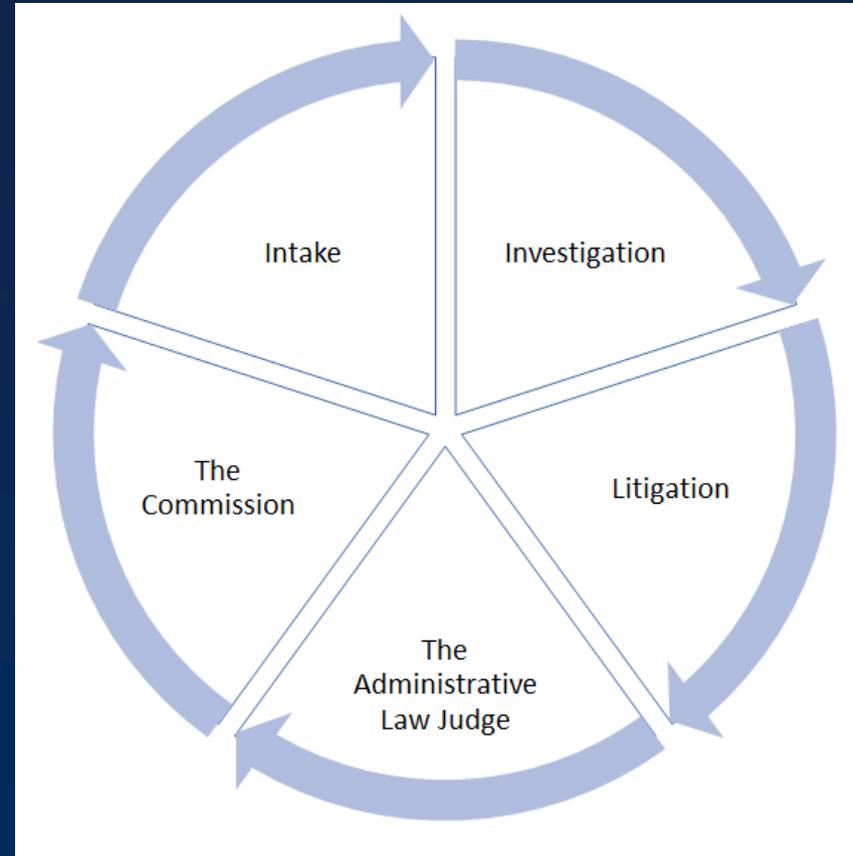
The Indiana Civil Rights laws gives ICRC jurisdiction to enforce equal opportunity for all in five (5) specific areas:

1. Housing/Real Estate
2. Employment
3. Public Accommodations
4. Credit
5. Education

ICRC: COMPLAINT PROCESS

Public Outreach

Cultural Commissions



ADR

State Court



ICRC Legal Update

Settlement and Conciliation

SETTLEMENT & CONCILIATION

Generally, all ICRC settlements include:

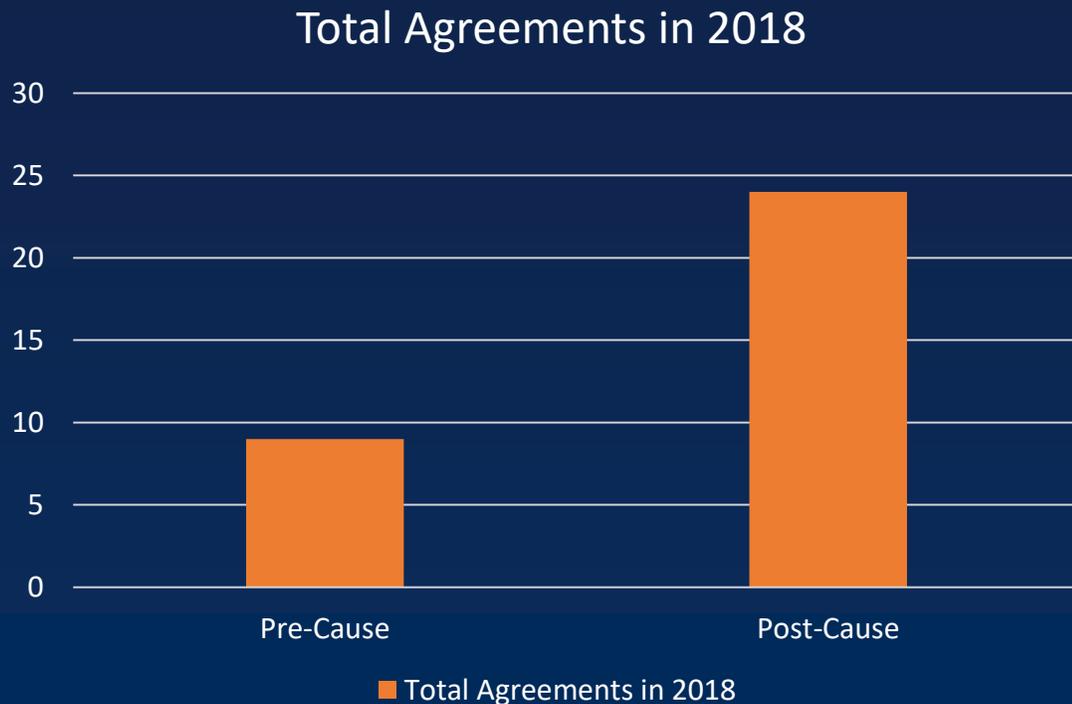
- 1) training,
- 2) EEO advertisement,
- 3) policy changes,
- 4) non-discrimination, and
- 5) non-interference

ICRC monitors the agreements for compliance

Two types of settlement: ***post cause and pre cause***

In each settlement discussed, the Respondent **did not admit to the allegations.**

2018 DISCRIMINATION CAUSE FINDINGS



Pre-Cause Monetary Damages for 2018:
\$11,729.00

Post-Cause Monetary Damages for
2018: \$117,247

Average Pre-Cause Monetary Damages
2018 : \$1,303.22

Average Post-Cause Monetary
Damages 2018 Average: \$4,885.29

ADR STATISTICS YEAR TO DATE

Pre-Cause Formalized Conciliation Agreements: 35

Post-Cause Formalized Conciliation Agreements: 3

Total Amount Awarded through ADR (01/2019 – 05/2019): \$275,162.00

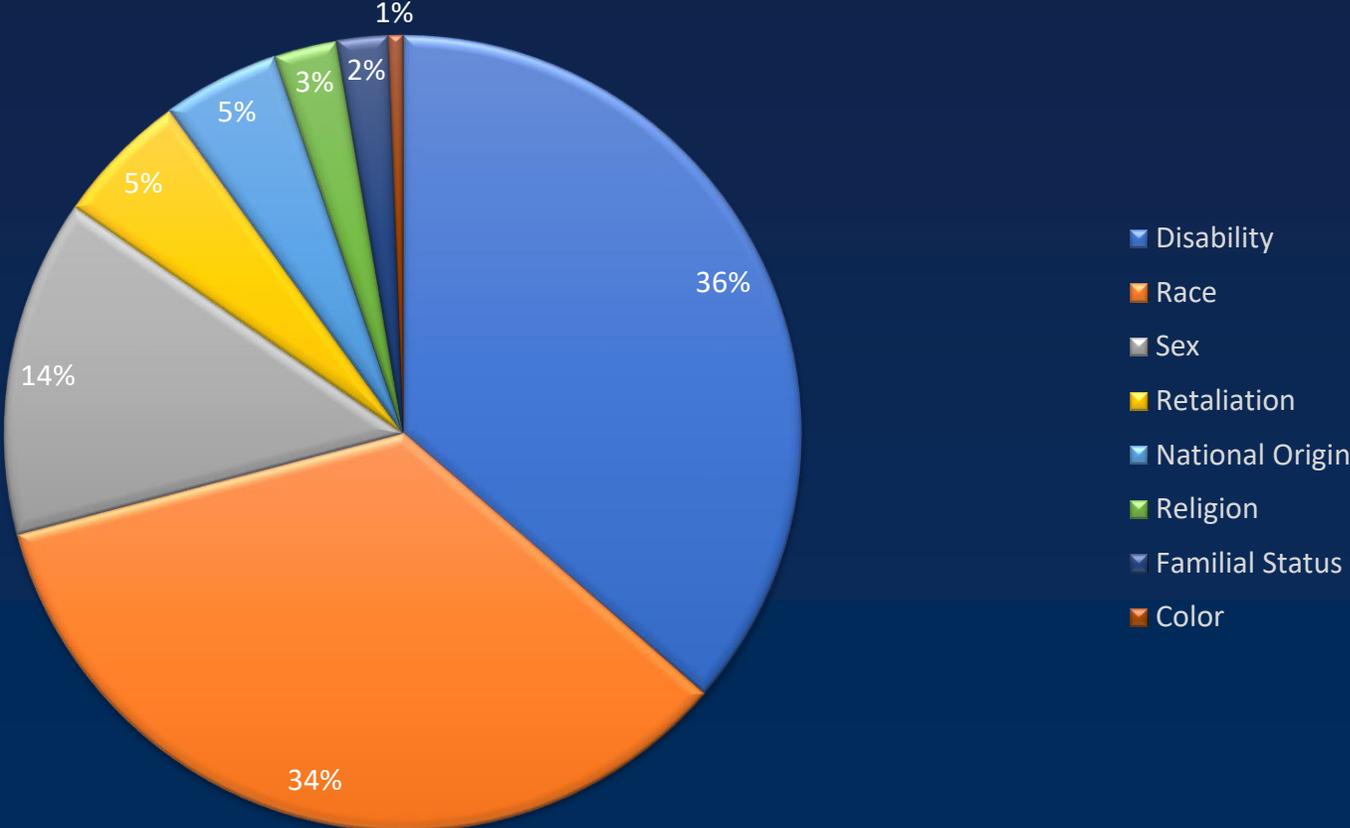


ICRC Legal Update

Fair Housing

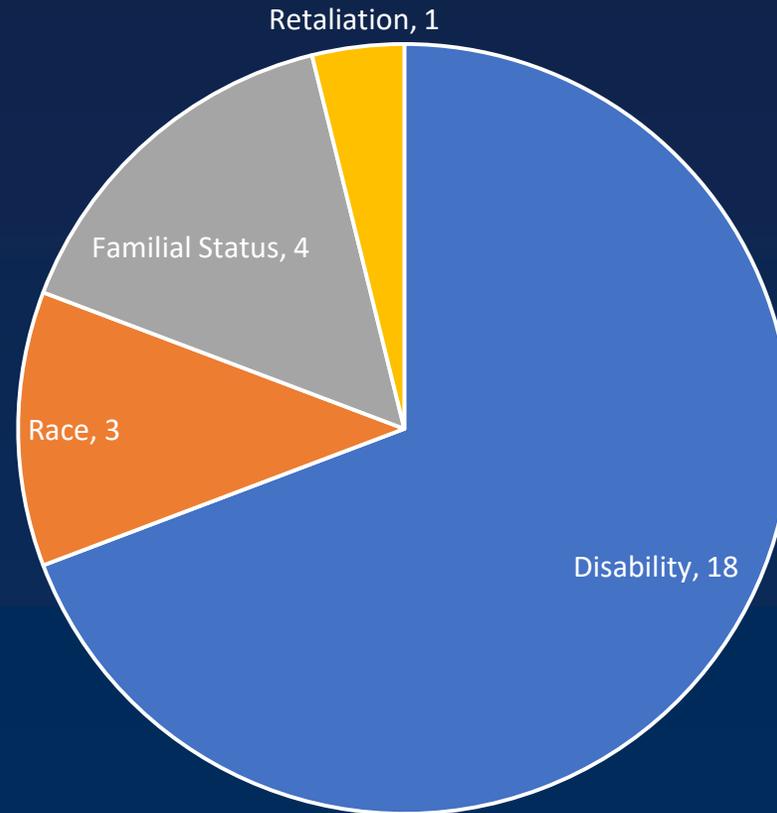
HOUSING COMPLAINTS FILED IN 2018

Fair Housing Complaints: 155



2018 HOUSING CAUSE FINDINGS

Findings of Cause in Housing Discrimination Cases: 26





ICRC Legal Update

Fair Housing

Conciliation

HOUSING: CONCILIATION

Wilson (ICRC) v. Hawthorne Holdings/ Crest Management

Director Initiated Complaint concerning design and construction violations with respect to kitchens, bathrooms, and switches

Monetary Relief: \$500

Affirmative Relief: bring the apartments into compliance with design and construction requirements

HOUSING: CONCILIATION

Wilson (ICRC) v. WRK Rentals

Complaint alleged that Respondent refused to renew the lease of the aggrieved party because Respondent considered the aggrieved party's behavior inappropriate. The behavior in question was the direct result of a disability, which the aggrieved party told to Respondent. Respondent did not engage in the interactive process to find a reasonable accommodation before moving forward with the nonrenewal process.

Monetary Damages: \$5,000.00

Affirmative Relief:

- Advertisements
- Revised reasonable accommodation policy
- Custom Reasonable accommodation process
- Fair Housing Posters
- Fair Housing Training

HOUSING: CONCILIATION

Unique Remedies:

- Vacating evictions
- Specific training
- Audits
- Designer policies



ICRC Legal Update

Fair Housing

Administrative Forum

HOUSING: ADMINISTRATIVE FORUM

Hite v. Zender Family Limited Partnership Complaint alleged that Respondent denied a reasonable accommodation of breaking a lease without applying a fee that would have prohibited the move.

Failure to engage in the interactive process

Denial of a reasonable accommodation

Damages

- Out of Pocket: \$1,170.00
- Emotional Distress: \$13,830.00
- Civil Penalty: \$5,000.00



ICRC Legal Update

Fair Housing

State Court Litigation

HOUSING: STATE COURT CASES

Wilson (ICRC) v. Winchell, Case No. 84D06-1803-PL-001486

Aggrieved person filed a complaint alleging housing discrimination on the basis of disability against two housing provider defendants. Defendants removed the case to the Vigo Circuit Court.

Defendants filed a Motion to Dismiss pursuant to T.R. 12(B)(1), arguing that the court lacked jurisdiction over both Defendants. The court granted Defendants' motion, reasoning that it lacked jurisdiction over one defendant because she was not a named respondent at the administrative level and over the other defendant because a Notice of Finding and Issuance of Charge was not timely issued under Ind. Code 22-9.5-6-8.

ICRC filed a Notice of Appeal on June 7, 2019.

HOUSING: STATE COURT CASES

***Wilson (ICRC) v. Furbee*, Case No. 18C01-1805-PL-0044**

Aggrieved person filed a complaint alleging housing discrimination on the basis of disability when defendants made extensive inquiries into the aggrieved person's medical history. Defendants removed the case to the Delaware Circuit Court.

Defendants filed a Motion for Summary Judgment, arguing that the inquiries were a reasonable part of the interactive process and necessary to their ability to conduct a meaningful review of a requested accommodation and make an informed decision.

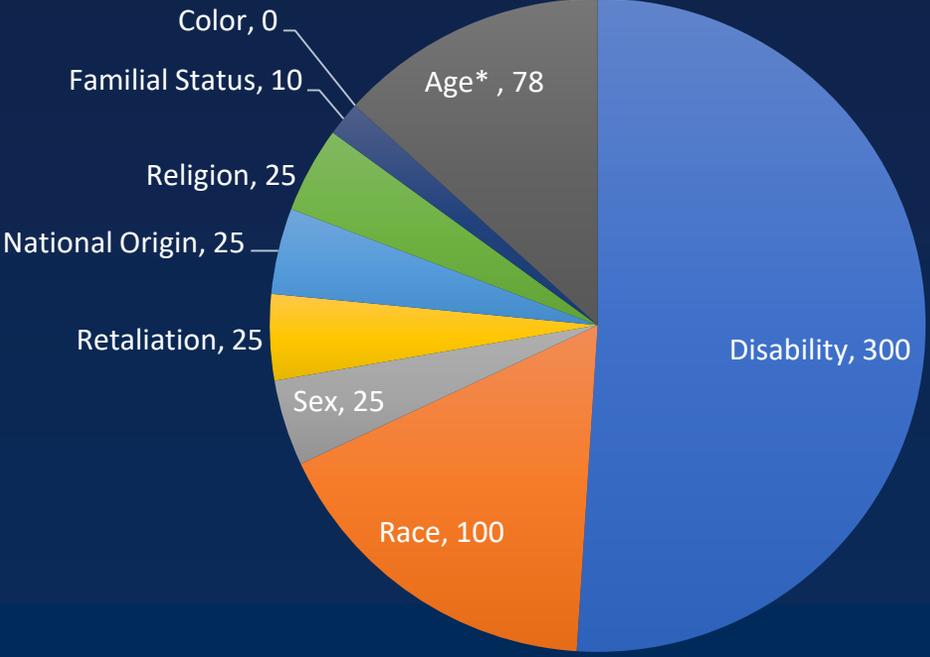
The court disagreed and denied Defendants' motion, reasoning that the Defendants' requests had exceeded the reasonable inquiry to which they were entitled.



ICRC Legal Update

Employment

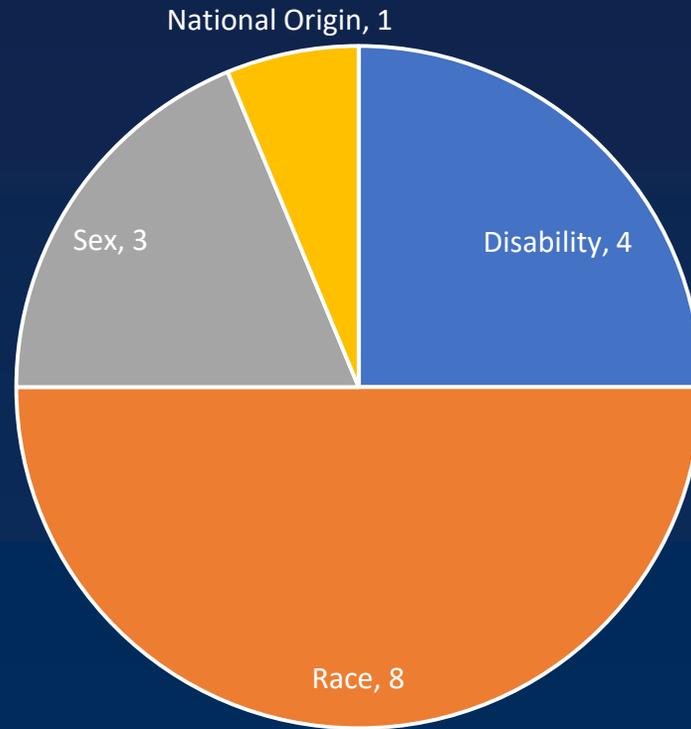
EMPLOYMENT COMPLAINTS FILED IN 2018



■ Disability ■ Race ■ Sex ■ Retaliation ■ National Origin ■ Religion ■ Familial Status ■ Color ■ Age*

2018 EMPLOYMENT CAUSE FINDINGS

2018 Employment Cause Findings: 16





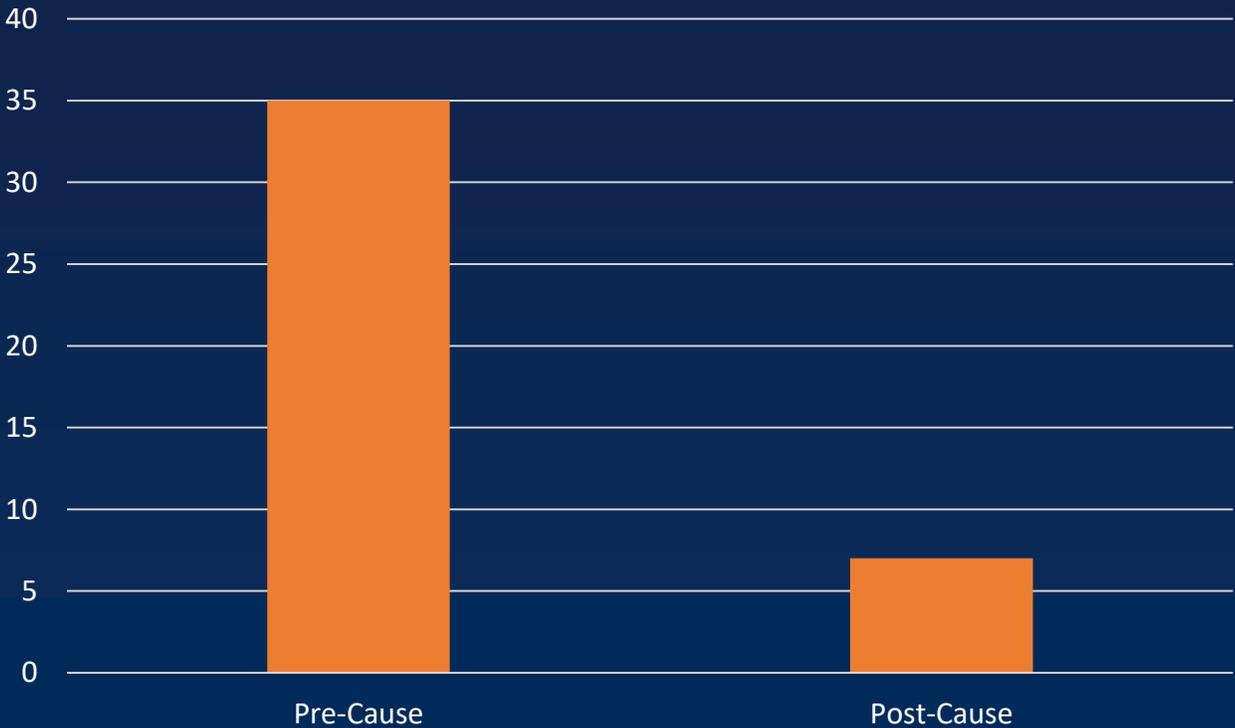
ICRC Legal Update

Employment

Settlement

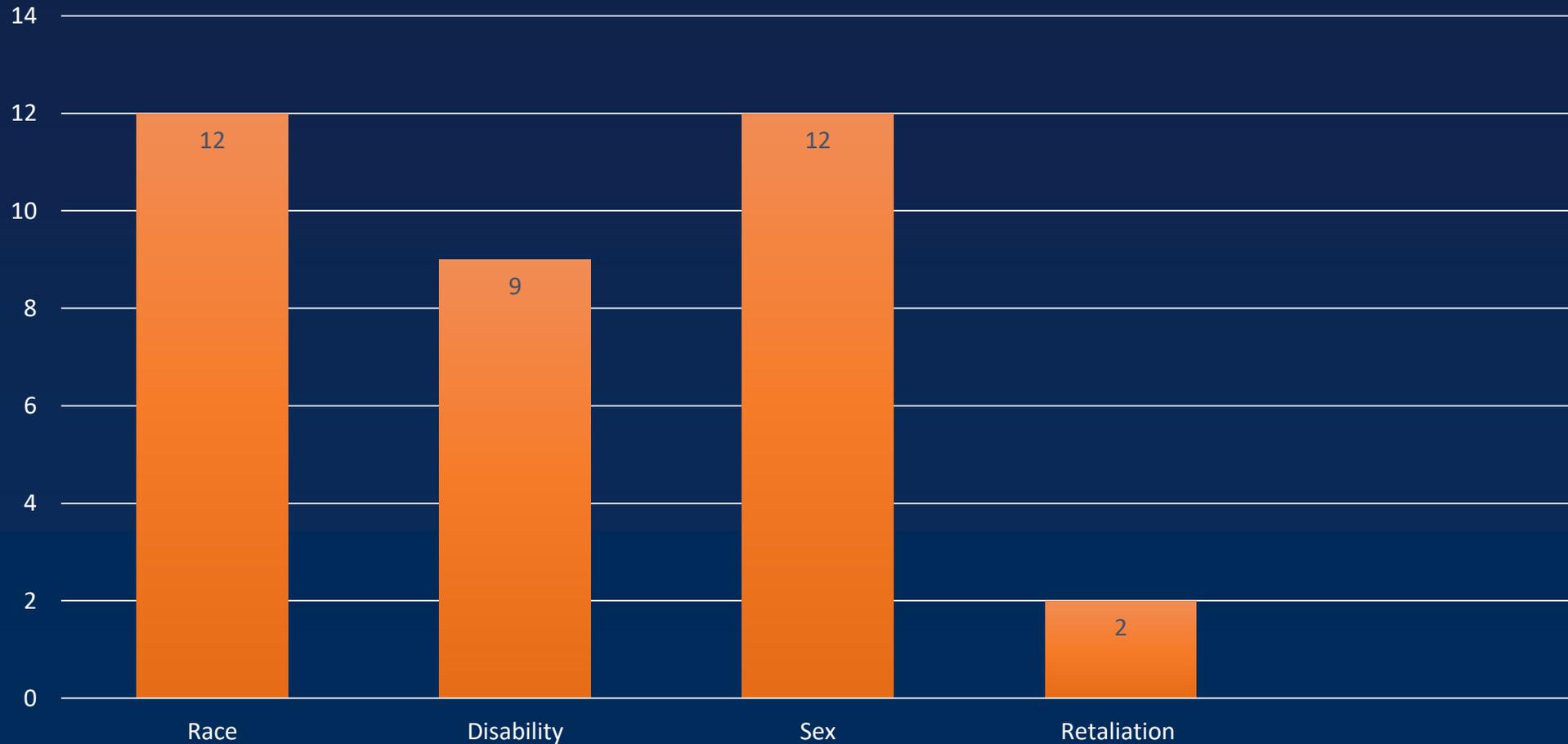
EMPLOYMENT: SETTLEMENT

Total Agreements in 2018



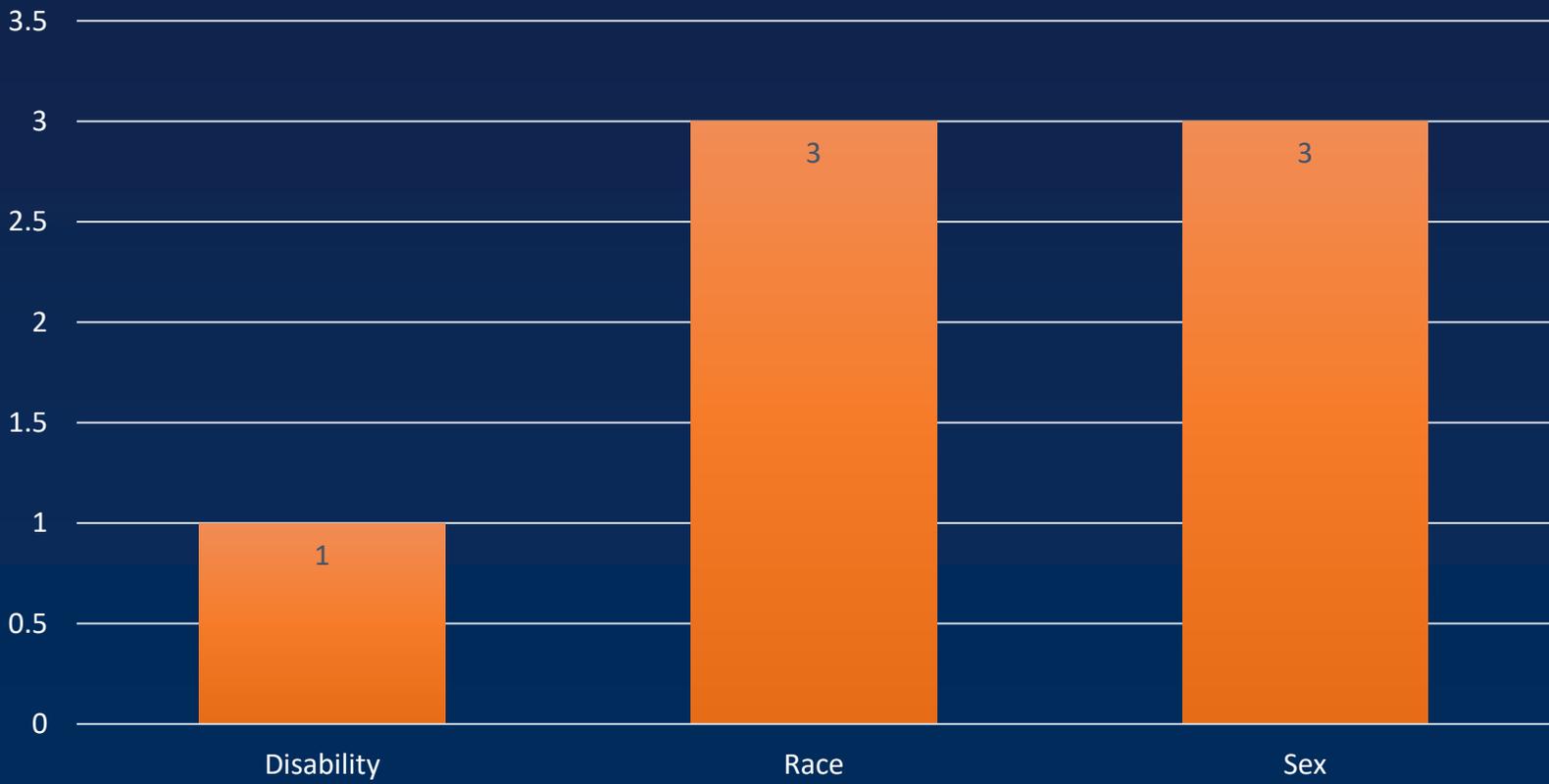
EMPLOYMENT: SETTLEMENT

Pre-Cause Settlements: 35



EMPLOYMENT: SETTLEMENT

Post-Cause Settlements: 7



EMPLOYMENT: SETTLEMENT

Settlement Summary:

In Last Quarter of 2018, over \$80,000 Issued to Individuals Alleging Discrimination in the Workplace

Between October and December 2018, ICRC's ADR unit resolved 15 employment discrimination complaints through ADR/mediation—a rate of five successful employment discrimination mediations each month. In the final three months of 2018 alone, the ADR unit facilitated agreements awarding individuals alleging employment discrimination a total of \$82,980, with an average settlement of \$5,532.



ICRC Legal Update

Employment

Administrative Forum

EMPLOYMENT: ADMINISTRATIVE FORUM

Ogden v. Ind. Dept. Workforce Development, ICRC No. EMrt14020095

Complainant alleged Respondent terminated her serving as a comparator in a complaint filed by her friend and coworker. Complainant was a new employee subject to a six month test period. Complainant received a six month Working Test Appraisal score of “needs improvement.” Respondent extended Complainant’s test period. Complainant received a score of “does not meet expectations” in her second assessment and was terminated. Respondents filed motion for summary judgment.

ORDER:

1. Comparators are protected from retaliation as persons “participating” in an investigation.
2. Extending Complainant’s test period was an adverse action.
3. Respondent’s knowledge that Complainant served as a comparator; Respondent’s reason for extending Complainant’s working test period; and Respondent’s reasons for terminating Complainant were genuine issues of material fact.

EMPLOYMENT: ADMINISTRATIVE FORUM

Key v. Campagna Academy, Inc., ICRC No. EMra16061232

Complainant alleged Respondent subjected him to disparate treatment and termination on the basis of his sex and/or race. Complainant was the only male nurse on Respondent's staff. He was well-liked by his colleagues and regarded as a good employee and knowledgeable nurse. Respondent implemented new, stricter attendance and overtime policies that were ill received by staff. Complainant and others were disciplined for violating the new policy. Respondent contended that Complainant was not meeting their legitimate business expectations. Complainant asserted that Respondent's proffered reason was a pretext for discrimination.

1. Complainant showed a prima facie case of discrimination.
2. Respondent's burden under McDonnell Douglas framework is one of *production*, not persuasion; Respondent proffered legitimate business reasons for adverse action.
3. Burden lay with Complainant to prove Respondent's proffered reasons were pretextual (false) *and* that the true reasons were discriminatory.
4. Complainant had not met his burden.

Dismissed.

EMPLOYMENT: ADMINISTRATIVE FORUM

Yufen (He) Dusan v. Belterra Casino, ICRC No. EMha13101544

Complainant suffered a back injury while working for Respondent. After seeking medical treatment, Complainant was placed on work restrictions. Complainant was assigned transitional duties any provided information of vacant positions, but was not reassigned to a new position. When Complainant's temporary duties expired, she was terminated.

ALJ's Proposed Order:

1. Reasoned that the Respondent had not assisted Complainant beyond what Complainant could have achieved on her own by applying for any job;
2. Applied a burden shifting analysis for reasonable accommodations;
3. Found Respondent failed to credibly show that Complainant was not qualified to be reassigned to a vacant barista position with a reasonable accommodation;
4. Awarded \$76,583 in back pay, an amount reduced by half from total back pay because Complainant only sought to mitigate losses by seeking part time work.

A final order has not yet been issued by the Commission.

EMPLOYMENT: ADMINISTRATIVE FORUM

Harris v. Lifetime Properties, Inc., ICRC No. EMra16021034

Complainant alleged she was terminated by respondent due to her race. The Commission found that the Respondent was in default because:

1. Respondent's counsel appeared at the hearing scheduled on the matter, but moved to withdraw his appearance.
2. When the motion to withdraw was granted, Respondent was not present at the hearing.
3. The ALJ entered a Notice of Proposed Default Order and served Respondent at their last known address, but the notice was returned to the ICRC.
4. The ALJ served the Notice by publication in the Indianapolis Star.
5. Respondent failed to reply by written motion.

The facts alleged in the Complaint and through the Complainant's testimony at the hearing were deemed admitted. Complainant awarded \$67,331.79 in lost wages and affirmative relief.

EMPLOYMENT: ADMINISTRATIVE FORUM

Shepard v. Town of Ingalls, EMrt15070493

Complainant alleged Respondent suspended and later terminated her because she had filed a complaint with the ICRC. Respondent maintained that Complainant was suspended and terminated because she violated the Respondent's employee handbook multiple times.

1. Respondent alleged Respondent had no knowledge of Complainant's initial discrimination complaint and that no causal connection could be shown between the filing of the complaint and the adverse action.
2. Unverified exhibits submitted by the Respondent could not be considered by the ALJ, except as they pertained to facts that were not outcome determinative.
3. Whether Respondent knew Complainant had filed a complaint and whether the suspicious timing of Complainant's suspension and termination was evidence of discriminatory intent were issues of material fact.

Motion for Summary Judgment denied.

EMPLOYMENT: ADMINISTRATIVE FORUM

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Motion for Summary Judgment denied.



ICRC Legal Update

Employment

Appellate Decisions

EMPLOYMENT: APPEALS

***Knox County Ass'n for Retarded Citizens, Inc. v. Davis*, 100 N.E.3d 291 (Ind. Ct. App. 2018)**

Plaintiff experienced a single episode of unconsciousness, known as a “syncopal episode” that caused her to miss work. Her doctor could not determine a cause but prescribed a “light duty” work restriction. Defendant terminated Plaintiff, claiming she could not complete duties necessary to her work.

HELD:

1. Agency interpretations codified as 910 IAC §§ 3-2-9 and 3-2-15, defining the terms “major life activity” and “substantially limits,” were held invalid, but the court embraced a broad definition of those terms.
2. ICRC did not err when it found Plaintiff’s episode constituted a “disability” that “substantially limited” a “major life function.”
3. “. . . KCARC discriminated against Davis on the basis of her disability when it fired her instead of attempting to determine if there was a reasonable accommodation available.”

Affirmed on rehearing (July 2018).

EMPLOYMENT: APPEALS

Roman Marblene Co. v. Baker, 97 N.E.3d 236 (Ind. 2018)

In 2017, the Indiana Court of Appeals found in favor of the ICRC and CP, Reginald Baker.

Roman Marblene Company sought transfer to the Supreme Court of Indiana, which denied transfer, with all justices concurring.

On appeal, RP argued that the ICRC did not have the authority to reverse the ALJ's decision. The Court disagreed and awarded CP \$96,228.40

UPCOMING EMPLOYMENT CLE

November 9, 2019

Evansville, IN

Employment Law Update (3.0 CLE)

Visit www.in.gov/icrc for more details

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